[Unapproved and Subject to Change]
FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

November 14, 2006

Chairman Randolph called the November 14, 2006, meeting to order at 10:05 a.m. Chairman Liane Randolph, Commissioners Eugene Huguenin, Phil Blair, and Sheridan Downey were present. Commissioner Remy arrived during the discussion of Item 3.

Item #1. Public Comment

There was none.

Consent Calendar – Items #2-9.

Commissioner Downey moved approval of the Consent Calendar; Commissioner Blair seconded the motion, Commissioner Huguenin and Chairman Randolph supported the motion, which carried with a 5-0 vote.

ACTION ITEMS

Item #3. In the Matter of Maribel De La Torre and Families for Maribel De La Torre, FPPC No. 02/408.

General Counsel Luisa Menchaca, summarized the procedures for a default decision. Ms. Menchaca noted that the Commission's three choices would be to allow the Respondent to file a Notice of Defense, send the matter to an ALJ for hearing or approve the default.

Enforcement Counsel Margaret Figeroid distributed exhibits that were inadvertently omitted from the packet. Ms. Figeroid noted that they were exhibits to the exhibit of the Decision and Default, the Proof of Service of the accusation, and the Order.

Ms. Figeroid explained that the case involved the default decision and order in the case of Maribel De La Torre and Families for Maribel De La Torre, which includes ten violations of the Act of failing to timely file semiannual statements (6 counts); failing to disclose required contributor information (2 counts); failing to disclose required expenditure information (1 count), and failing to file a Form 501, Statement of Intention to be a Candidate (1 count).

The administrative penalty in the default requested is $12,500. Ms. Figeroid stated her belief that every effort was given Ms. De La Torre to settle or request a hearing in the matter. The procedural history is laid out in page 3 of the Exhibit to the Default Decision and Order. She indicated that the Enforcement Division started settlement negotiations in October of 2005. They sent a stipulation and enclosed information regarding the probable cause proceedings. On December 20th, they sent a letter with the revised stipulation based on these negotiations. On January 10th they sent a letter advising respondents that they would go forward with the prosecution by issuing a Probable Cause Report. They heard nothing from the Respondent. On

February 23rd, the Probable Cause Order was served by certified mail, and was returned unclaimed. In March, they entered into more settlement negotiations, and on March 21st, sent a letter memorializing the most recent agreement and sent the settlement documents to respondents. On March 30th, Ms. Figeroid called Ms. De La Torre, who said she was picking up the documents and would call the next day. Ms. Figeroid heard nothing from her until yesterday afternoon around 3 o'clock advising that she was going to be at the meeting today.

In April Ms. Figeroid called respondent six times and left messages heard nothing back from her. On April 20th, she left a message that they were going to go forward with the prosecution. On May 9th, they sent the ex parte request for finding of probable cause to respondents. And on May 15th, the Executive Director issued an order finding probable cause, and respondents were served this document also, which was also returned unclaimed.

On June 23rd the accusation was issued and respondent was personally served on July 16th. Included in the accusation was a Notice of Defense which the respondent had 15 days to return, and she did not return anything on that. On October 3rd, Ms. Figeroid sent a letter informing respondent that the matter would be submitted for the default today, and gave respondent until October 30th to try and settle the case again. Ms. Figeroid heard nothing. After being personally served with the accusation on July 16th, respondent did not return her Notice of Defense within the 15 day statutory time frame, thereby waiving her right to an administrative hearing and prompting this default.

Chairman Randolph asked for questions before hearing from the Respondents. There were none.

Maribel De La Torre appeared and stated that much of what Ms. Figeroid said was true. But there are some items that were omitted. Ms. De La Torre indicated that she responded with a letter after initially hearing about the FPPC's charges in October of 2005, and faxed over 32 pages. She also filed everything with her City Clerk. She said Ms. Figeroid had sent her a letter December 20th to negotiate a $5,000 settlement. The Respondent told Ms. Figeroid that she did not have the money. She stated Ms. Figeroid pushed her to borrow the money. She said she is a single mom with two children. The city council is not a full-time job; they get paid $600 a month.

Thereafter, in between that time and February 2, 2006, there was negotiating going on with Ms. De La Torre and also with Steve Veddes, who was treasurer until December 15, 2005. Ms. De La Torre said she had him removed as the treasurer. She stated these negotiations created a lot of confusion as to what the terms of the settlement and what the agreement were going to be. On March 6, 2006, Ms. De La Torre sent a cashier's check to Ms. Figeroid. She said she told Ms. Figeroid that she could pay $2,000.00: $1,000 right away, and then payments of $500 and $500 to total $2,000. Ms. De La Torre said Ms. Figeroid took the payment and held onto it until July 2006. Ms. De La Torre said things were always very fluid. Things were changing; Ms Figeroid was talking to Steve; she was talking to Ms. De La Torre. Ms. De La Torre said she felt like it was extortion.

Ms. De La Torre stated that she was not saying that the counts were not valid, they were valid. But there were a lot of things that took place, and she didn't think they could be argued right

now. She asked for a hearing to present all of this information so the Commission could make a final determination.

Chairman Randolph stated that if the Commission were to grant a hearing it would be before an administrative law judge. The Enforcement Division would present their side and Ms. De La Torre would present her side. The ALJ would then recommend a decision, and then that decision would come before the Commission for the final decision. Or she could work out a settlement.

Ms. De La Torre concluded her comments by asking that someone else be assigned to her case that would only negotiate with her, not the former treasurer.

In discussing the Commission's options, Chairman Randolph indicated she didn't see the point of allowing the Respondent additional time to file a Notice of Defense because that is unnecessary given that Ms. De La Torre already asked for a hearing. So that would leave options 1 and 2.

Commissioner Blair asked what the typical Commission action was in these cases because he hadn't seen a case like this.

Chairman Randolph indicated that this was unusual. Typically Respondents do not show up on the date of the default and ask for a hearing. The Respondent had several months to request the hearing and did not. By the same token, she's here now making her request.

In response to a question, Chairman Randolph indicated that normally administrative law judges hear cases that do not settle.

Commissioner Blair moved that the case be referred to an ALJ. Commissioner Huguenin seconded the motion.

Commissioner Downey asked for discussion.

Commissioner Downey stated that this was the first time in his six years on the Commission that somebody has shown up on the day of the Consent Calendar to set aside a default or request some procedure. Commissioner Downey said that he sounded like there was no dispute as to the underlying violations but the parties clearly did not get along during settlement. The law was followed; service was made; time periods ran, and there isn't any claim of ignorance about the time periods. So the Commission must decide whether to let her go back into negotiations with the Enforcement Division.

Chairman Randolph stated that if the Commission sent the matter to a hearing, it would be up to the parties to try to negotiate a settlement. Or they could just go to hearing. The risk for the Respondent is that the ALJ and subsequently the Commission may say, "$5,000 isn't enough of a fine."

In response to a question, Chairman Randolph indicated that there was a $50,000 fine in the case. Chairman Randolph stated that she preferred approving a default only when there was no communication from the Respondents. In this case, she felt like there had been enough

communication from this Respondent that she was willing to let the Respondent take the risk of going to a hearing.

Commissioner Huguenin stated that this was one of those tough cases where perhaps the Respondent must realize that negotiation isn't just finding a penalty that fits with somebody's ability to pay but actually may have to exceed that in order to get to a settlement. He concurred with Chairman Randolph's view of the matter that defaults should be reserved for cases that are more one-sided than this one appears to be in terms of people coming forward and attempting to reach a resolution.

Chairman Randolph stated that she did not think it was a good negotiating strategy on the Respondent's party because the Commission would not turn around and say, "Okay, Enforcement Division, we want you to lower the numbers that you're looking at." She refused to tell the Enforcement Chief to assign somebody different to the case. She said both of the parties should sit down and see if they could hammer something out.

Chairman Randolph called the vote. Commissioners Downey, Blair, Huguenin, and Chairman Randolph supported the motion, which carried a 4-0 vote with Commissioner Remy abstaining.

Item #10. Adoption of Amendments to the "Public Generally" Exception to the Conflict-of-Interest Provisions - Regulation 18707.1, and Adoption of Regulation 18707.10.

Commission Counsel Bill Lenkeit from the Legal Division presented proposed amendments to regulations concerning the public generally exception to the conflict of interest provisions of the Act. He stated that at the September pre-notice meeting, the Commission considered certain proposed amendments and directed staff to bring back language for adoption under the three decision points offered today. The first decision point offers to modify the terminology used in defining the significant segment for real property interest by changing the word "homeowner" to residential property owner in order to take into consideration rental property.

This language is the result of a request by Lisa Foster of San Diego County to address of certain jurisdictions that contain a high percentage of rental properties. The Commission's current definition of homeowner includes only those who own the home in which they live. Owners of property that is rented out are not included. However, because the financial effects of a decision impact residential property values, irrespective of who or who may not be living on the property, and while rental properties may be considered under the broader definition of all property owner, there does not seem to be a sound reason for not including owners of rental property within the potential significant segment of residential properties affected.

Accordingly, Decision Point 1 would delete the word "homeowners" and replace it with the words "residential property owners" so as to include all owners of residential property regardless of who actually resides on the property. At the suggestion of the Commission at the Prenotice meeting, the term "residential properties" has been defined to include multi-family structures of 4 units or fewer.

The language in Decision Point 2, which grew out of a suggestion from the regulated community that more guidance was needed in order to determine what factors should be considered to

determine the financial effects of a decision, are substantially the same was discussed in some detail at the Prenotice meeting. The Commission generally agreed that these factors would be helpful in applying the public generally exception and directed staff to bring back different language for adoption without any substantial changes.

Finally, Decision Point 3 would revive the public generally rule for small jurisdictions by adding Regulation 18707.10. This decision point resulted from continuing concerns expressed by representatives of small jurisdictions at the Interested Persons' Meeting that the thresholds under the general rule were to difficult to meet in many small jurisdictions and a special rule was again needed for small jurisdictions.

At the September Prenotice meeting, the Commission withheld any in-depth discussion of this decision point due to the lack of any public comment concerning the proposed language, especially from representatives of the small jurisdictions affected. The Commission directed staff to leave the language as is and return with it at the November meeting to present the language for further discussion and to give the public and the regulated community another opportunity for public comment.

Mr. Lenkeit stated that the Commission received comment letters from Michael Martello, representing the League of Cities, Lisa Foster in San Diego County, and from the Mayor of the City of Ukiah, generally offering support for the adoption of the regulation. Mr. Martello's letter also asked the Commission to consider a change under Decision Point 1 regarding the amendments to the real properties significant segments test and a change to the small jurisdictions regulation. Lisa Foster has also requested an increase to the 25,000 population threshold in the small jurisdictions regulation.

Mr. Lenkeit discussed Mr. Martello's comment to change the word "residential property owners" to "residential properties". Mr. Lenkeit stated that it has been a long practice of the Commission to look at the financial effects on the official. If we changed it to residential properties, we would just be looking at comparing properties to properties, instead of officials to public. The rule requires a comparison of the official's financial interest to the significant segment's financial interest, not just their property.

Chairman Randolph asked what the language was before it was "homeowners."

Ms. Menchaca said it was homeowners and households, and then the Commission deleted "households." Mr. Lenkeit stated that the reason households was deleted was because it seemed in some instances that it might be looking at just the properties and not the owners of those properties. So, we're comparing the financial effects on owner versus owner, not property against property.

Commissioner Blair asked why it was limited to residential property.

Mr. Lenkeit explained that there are two categories in the regulation - residential properties or all properties. This amendment concerned residential properties.

A brief discussion followed regarding the "significant segment" analysis.

Chairman Randolph called for comments from the public.

Michael Martello stated that many City Attorneys were under the impression that counting residential properties rather than property owners was an acceptable analysis under the regulation. He stated that it was far too difficult to analyze the decisions that way. It would be too difficult to determine the number of property owners. He acknowledged that perhaps that problem couldn't be solved today.

Mr. Lenkeit agreed that making such a major change to the analysis in Decision Point 1 would be too difficult. He said that by just considering all properties, it would abolish the public generally regulation as it stands for these types of properties, because you're not comparing financial interests anymore. You're just comparing properties to properties.

Chairman Randolph asked if that's not what we did previously with households.

Mr. Lenkeit said that households were not interpreted that way. Some people did, and they would write in, and the advice letters would say, "No, household doesn't mean comparing just one property to another; it means the financial interests of those members of those households. And that's why the word household was taken out.

Ms. Menchaca said that to make the suggested change today, it would be outside the scope of the proposed regulation. Chairman Randolph and Ms. Menchaca discussed possible issues involved in changing the regulation.

Chairman Randolph suggested that the regulation could build in an assumption, to say "Okay, you have to compare 10 percent of all residential properties and you make the assumption that each property is owned by one person."

Commissioner Blair asked if it was possible to build such an assumption into the regulation.

Mr. Lenkeit stated that you still have to get back to the second prong of the public generally test and determine how many people own each property, which is what they're objecting to in the first place. They just want to count properties and compare property to property. Once you come up with a significant segment of properties, you're done. You don't go into second step which is the change Mr. Martello is advocating. If you just change it now and say "residential properties," and you can count the properties, that is what you do at the first step. And the second step is when you get into comparing the significant segment, whether they're affected in substantially the same manner this is where you get into, say, "Okay, this property is the same as my property. And I own my property by myself. Who owns this property? And if it's owned by ten people, they're out, and if it's owned by one person, they're in. But if we're just saying property versus property, then you don't even get into the second step to see if they're affected in substantially the same manner. You don't look into the ownerships of each property.

Commissioner Blair and Mr. Lenkeit discussed examples of how the second prong would be applied.

Chairman Randolph stated that the regulation could establish a presumption that would operate as follows: "Okay, you as a public official, if you want to take advantage of the public generally exception, you assume, regardless of the facts. Let's assume that you, the public official, own your property solely outright, and let's assume the same thing for everybody else, and then let's make our comparison. If you, the public official, don't own your property outright, you will be affected less. Let's say you will be affected one-fifth, because you own it with four other people. If you want to take advantage of that fact, then you have to go out and identify multiple property owners, and come up with your comparison that way. But we'll give you the out that you can do a one-to-one comparison if you want. Because if you're going to assume the official is the sole owner, they're going to take the same percentage of hit, but if the official wants—is a minority owner, then they will have to go out and find out other properties where there is a small percentage. But if the official wants to do it the easy way, then the official gets to do it the easy way.

Commissioner Remy suggested that additional language be brought back and input obtained from City Attorneys and officials who have to deal with these rules on a regular basis.

Chairman Randolph agreed.

Mr. Lenkeit clarified that staff would come back with some kind of a language that would provide a norm where the public official owns his or her residence with, say, either outright or with a spouse and they can assume that any houses any similar to theirs were owned similarly.

Chairman Randolph agreed.

Mr. Martello also agreed.

Mr. Lenkeit presented Decision Point 2 and indicated that there were no changes.

Commissioner Blair expressed concern that the regulation reiterated the rule that the official should consider the financial effect in dollar terms rather than percentages. Commissioner Blair was concerned about properties with vastly different values that could not be included in the public generally analysis.

Commissioner Huguenin stated that the problem is what you do with the guy, who owns 80 percent of the city, and the other 20 percent of the city is owned by somebody else, and the impact on all the properties is the same, except that 80 percent is his.

Mr. Lenkeit agreed, expressing concern about furthering the percentage analysis to other types of economic interests.

Commissioner Huguenin stated that once you start laying out their financial statements and trying to compare, you really get away from the focus of this which is to compare how their interest in the property within the jurisdiction is impacted.

Chairman Randolph agreed.

Commissioner Blair stated that if you have the biggest house in neighborhood, you're probably going to have to recuse yourself from most things that go on in that neighborhood because the dollar gain will be higher than anybody else's.

Mr. Lenkeit stated that this was correct.

Chairman Randolph stated that we're talking about is an exception. The official goes through steps 1 through 6, and has determined that you, the public official, have an economic interest that is going to be financially impacted by this decision. And then the question is: Are you allowed to participate anyway? Even though we know you're going to be financially impacted—are you allowed to participate anyway because everybody else is going to be impacted to the same degree. And so, she stated, when you're applying an exception like that you need to do it fairly narrowly and basically say, "Look, if you've got the biggest house in the neighborhood and you know it's about to go up, you know, $100,000 in value, then just because down the street somebody else's house is going to go up $10,000 in value, well that means well, probably you shouldn't be participating in that because you're benefiting to a much great extent than somebody else.

Commissioner Blair stated that he would no longer pursue the issue.

As to Decision Point 2, Mr. Martello stated that he supported Decision Point 2 because it sets forth a list of factors that you can really use and explain to your officials why you have come to the conclusion why they probably don't qualify for the public generally.

Chairman Randolph began discussion of Regulation 18707.10 - Public Generally for Small Jurisdictions. She noted that most comments were in support but there was a request to increase the threshold above 25,000 residents.

Mr. Lenkeit provided a list of just how many jurisdictions would actually be included if we adopted the language as it stands right now with 25,000 residents and 10 square miles. The first list is the number of cities in California right now that are under 25,000 in population. The one page list is how many cities would be included if we increased to 30,000, and still left it at 10 square miles. The ones that are in bold are the ones that would be included. The other ones would fall out because they are over the 10 square mileage limit. Right now there would be 190 jurisdictions that would be included in the small jurisdiction regulation. If we increased it to 30,000, there would be another 16 that would be added. Some of those, Santa Paula, Maywood, and Foster City close to exceeding 30,000 residents.

Chairman Randolph clarified that the difference between 25,000 versus 30,000 is 16 jurisdictions.

Mr. Lenkeit agreed and pointed out that the 10 square mile requirement seemed to work pretty well. It seemed that most jurisdictions were either well within that or well outside of that. There were three exceptions: South Lake Tahoe at 10.1, Clearlake at 10.2, and Yreka at 10.0. Yreka would be included because it is 10 square miles or less. South Lake Tahoe and Clearlake would be just outside at 10.1 and 10.2.

Chairman Randolph stated that her inclination would be to draw the line smaller, so keep it at 25,000 instead of 30,000, and keep the 10 acre limit, but she did not feel strongly about it.

Commissioner Remy indicated a preference for 30,000. He stated that using current numbers we are really talking about 8 or 9 cities, and it particularly struck him that the three cities down in San Diego County between 25,000 and 30,000 have unique problems relative to making decisions. He didn't see any disadvantage to going to 30,000.

Commissioner Huguenin also argued in favor of 30,000 because most of these jurisdictions are growing. Some will grow out of the 30,000 number.

Commissioner Downey cautioned that we don't want to forget that what we're doing is carving out an exception to our conflicts rules for the small jurisdiction—that if you're a city council person in a small jurisdiction, you may have a greater conflict of interest and still participate than if you live in San Francisco. That mitigates towards reducing the number of exceptions that are going to come in. And we're balancing the competing interests that small jurisdictions have in order to allow those more substantial conflicts of interest to go forward in terms of participating and decision-making. Commissioner Downey indicated that he could go either way.

Commissioner Remy asked about line 16 where it says "similar in value." He asked, how do you make that judgment?

Mr. Lenkeit stated that when this issue has come up before, the Commission has decided that it would be something that would be determined on a case-by-case basis.

Chairman Randolph stated that she thought "similar in value" should stay in, because in practical terms if you want to use this exception, you're in a small jurisdiction, and you're looking basically for your ordinary, standard property. And if you're talking about your standard subdivision it's not going to be that hard to identify properties similar in value. If you have a property that is unusual, like there's your subdivision and maybe there's a row of houses with an ocean view— then you pull those out of your analysis, because one of these is not like the other.

Mr. Martello commented in support of the regulation. He said this rule has a lot more analysis to it in letting somebody participate rather than using legally required participation which involves picking a straw with a person with a conflict. One suggestion is that maybe the Commission look at it in a couple of years and decided whether it's working. As for the 25,000 or 30,000, Mr. Martello did not express an opinion but he did note that the 10 square mile rule would prevent the exception from growing too broad because most cities' geographical size is static.

There was no further comment.

Commissioner Remy moved approval of Regulation 18707.10 with the 30,000 figure. Commissioner Huguenin seconded.

Regulation 18707.10 passed with a vote of 4-1, Commissioner Downey voting no.

Chairman Randolph brought the discussion back to 18707.1. She stated that there was consensus on Decision Point 2. The next step would be for staff to come back with some proposed language for lines 2 and 4, along the lines of what the Commission discussed.

Mr. Lenkeit agreed to bring back language in December.

Item #11. Biennial Gift Limit Adjustment: Adoption of Amendments to Regulations 18703.4; 18730; 18940.2; 18942.1; and 18943: Adjustment of Gift Limits.

Joan Giannetta, regulation coordinator for the Legal Division, presented for adoption the adjusted gift limit of $390.00 for calendar years 2007 through 2008.

There were no comments or questions.

The amendments were moved in a single motion by Commissioner Blair and seconded by Commissioner Downey to adopt amendments to Regulations 18703.4, 18730, 18940.2, 18942.1 and 18943. The motion passed 5-0.

Item #12. Cost of Living Adjustment for Campaign Contribution Limits and Voluntary Expenditure Ceilings: Adoption of Amendments to Regulation 18545.

Ms. Giannetta presented Regulation 18545 with amendments adjusting the contribution limits and voluntary expenditure ceilings for state candidates for the period January 1, 2007 through December 31, 2008.

There were no comments or questions. Commissioner Blair moved to approve the amendments. Commissioner Huguenin seconded.

The motion passed 5-0.

Item #13. Adoption of Proposed Amendments to Regulations 18312; 18316.5; 18326; 18401; 18521; 18537.1; 18704.5; 18705.1; 18705.5; 18730; and 18746.2: Technical Changes to the Political Reform Act.

Ms. Giannetta presented non-substantive corrections found in the California Code of Regulations, Title II, Division 6. She noted the item number addressing Regulation 18705.1, which sets forth the materiality standards for business entities which a public official has an economic interest for purposes of determining whether there is a conflict of interest in a governmental decision. The regulation refers to the New York Stock Exchange listing requirement. That requirement was previously based on a company's earnings for its most recent fiscal year. Since the adoption of this regulation, the New York Stock Exchange has changed its listing requirements, creating confusion as to what standard to apply. If the intent of the regulation is to mirror the New York Stock Exchange listing requirements, the amended language should be adopted. While the three-prong test is more complicated than the current one-year test and may raise questions for business entities that are less than three years old, it is consistent with the original intent in adopting the current regulation.

However, the Commission may also want to consider creating a new or simplified standard that does not conform to the New York Stock Exchange Standard. If the Commission decides that they wish to create a new or simplified standard that does not conform to the Stock Exchange, this item should be removed from the technical packet and added to the regulatory calendar for 2007 and proceed as a new, independent regulatory project.

Commissioner Huguenin indicated that he had comments about sub-items 11, 9 and 6.

Chairman Randolph started chronologically with sub-item 6.

Sub Item #6

Carla Wardlow from the Technical Assistance Division explained that they proposed this item regarding carryover provisions. Section 85318 allows a candidate to raise money for both the primary and the general elections before the primary election. And then it says that the general election contributions have to be set aside and returned to contributors if the candidate does not run, or loses in the primary, or otherwise doesn't run in the general election. And so the question that came up was if the candidate raised money for the primary and general but didn't file the papers or didn't otherwise fulfill the requirements to appear on the ballot, does the candidate still have to return the money. The statute says the money must be returned. TA felt there was a need to clarify that the regulatory section applies to the carryover provision also when the candidate doesn't appear on the ballot. The candidate can't carry over or transfer with attribution money raised for the general under any circumstances.

Commissioner Huguenin stated that this answered his question.

Sub Item #8

Commissioner Huguenin stated that there was a third alternative and that is to keep the old standard in place by writing that standard into the regulation, rather than just referring to it by reference, which would leave everything the way it is in California, and not have to have people bouncing back and forth to the New York Exchange Standard.

Senior Commission Counsel John Wallace suggested adding the item to the upcoming regulatory calendar. The Commission agreed.

Sub-Item #9.

Commissioner Huguenin was concerned that it looked like the change was extending the number of people that public official has to look at in terms of impact on personal finances by including immediate family.

Chairman Randolph asked Mr. Wallace if this item was proposed because of a drafting error.

Mr. Wallace confirmed that was the case. The statute already has the immediate family language.

Sub-Item #11

Commissioner Huguenin stated that he was concerned about the issue in the third paragraph under the explanation because he thought it might impact the revolving door regulation coming up in the future. But Commission Counsel Brian Lau stated if regulation 18746.3 is adopted, regulation 18746.2 will also apply to section 87406.3. But whether or not that is adopted has no bearing on the language as drafted right now.

Commissioner Huguenin moved the proposed amendments to the various regulations, as noted by staff, with the exception of Item #8, which was referred to the regulatory calendar. The motion was approved 5-0.

Item #14: Adoption of Regulation 18421.3 – Contributions through Vendors.

Commission Counsel Emelyn Rodriguez with the Legal Division presented proposed Regulation18421.3 for adoption. Due to the narrow scope of this project, there was no Prenotice discussion held. The staff has noticed that the proposed language with the Office of Administrative Law, and has since made some minor, non-substantive changes to the noticed version. To date, no public comments have been received, and staff asks that the Commission adopt this regulation as revised.

Proposed regulation 18421.3 codifies existing Commission advice with regard to contributions collected through vendors. First, it would clarify that candidates or committees may contract with a vendor to establish accounts to collect contributions and that the contributions may be held in these accounts prior to transfer of the funds to a campaign bank account. It also specifies that vendors that collect such contributions are agents of the candidates or committee; it states that vendors may deduct their fees from the contributions prior to transmitting the funds to the candidate or committee, and that these fees are to be reported as expenditures from the campaign bank account at the time the fees are deducted or charged. And lastly, it clarifies that the entire amount authorized by the contributor is the amount of the contribution. The proposed regulation is intended to provide some flexibility for campaigns that wish to take advantage of technological changes which have facilitated new options for fundraising. One of those options available is the service of vendors or collection agents, some of whom gather contributions on behalf of candidates or committees over the Internet, and through credit card, debit card, or other similar electronic transactions. These vendors often hold contributions in temporary accounts and then later transfer the funds to the candidate or committee's campaign bank account. Now, staff has advised over the years through - *Turner* and other advice letters - that these arrangements are permissible so long as the Act's disclosure, record keeping, and other requirements are met. This regulatory project was proposed last year by the Commission's Technical Assistant's Division in order to clarify the rules with regard to these vendors, because even though these types of arrangements have been permitted through long-standing staff advice, the Commission's statutes and regulations do not specifically address them. So the proposed regulation is intended to clarify that such transactions are permissible under the Act and that they are consistent with the intent of the one-bank account rule under section 85201, as it pertains to candidates and their controlled committees.

There were no questions or comments.

Commissioner Blair moved approval. Commissioner Huguenin seconded.

Commissioner Huguenin commented that what we're dealing with is the gross amounts in all these transactions that impact the recording and the one bank account, even though they are going to have multiple bank accounts when vendors set up these satellite pots into which money flows and out of which they take their collection expenses. And those are all going to be reportable by the candidates to the gross of the amount of the contribution and as expenditures by the candidate, and that's how we accomplish the one bank account policy in the context of all these little satellite pots.

Ms. Rodriguez indicated that was correct. Disclosure and reporting provisions of the act must still be followed. The transparency that's required under the one bank account rule will still be in effect. It just allows some kind of flexibility for campaigns to take advantage of this kind of fundraising option.

Motion to adopt Regulation 18421.3 passed 5-0.

Item # 15. Executive Director's Report.

In response to a question from Commissioner Remy, Executive Director Mark Krausse explained that for budget purposes in counting retired annuitants, who only work up to 1000 hours a year, we use a full position and we have salary savings. This avoids having to split the position into two part-time positions.

Item #16. Litigation Report.

Chairman Randolph indicated that the Court of Appeal would be holding a hearing on Friday in the *Citizens of the State of California vs. FPPC* case.

The Commission adjourned to closed session at 11:46 a.m.

The Commission returned to open session at 12:15 p.m. Chairman Randolph reported that no reportable action was taken in closed session and adjourned the meeting.

Dated: December 28, 2006

Respectfully submitted,

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Leah Yadon
Commission Assistant

Approved by:

_____

Liane Randolph
Chairman